

STATE OF MARYLAND,

Appellant,

v.

ADNAN SYED,

Appellee.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2022

No. 1291

Circuit Court Case Nos. 199103042-46

**MOTION TO STAY THE CIRCUIT COURT PROCEEDINGS PENDING
RESOLUTION OF THE APPEAL**

Young Lee, the crime victim representative of the family of decedent Hae Min Lee, the crime victim in the above-captioned case, by and through undersigned counsel, hereby moves pursuant to Maryland Rules 8-422, 8-425, and 8-431 for an immediate stay of all circuit court proceedings pending resolution of the appeal in this case and, in support thereof, states as follows:

I. Background and Proceedings Below

Adnan Syed was convicted of murdering his ex-girlfriend, Hae Min Lee, in the Circuit Court for Baltimore City on February 25, 2000. His conviction was affirmed in multiple post-conviction proceedings.

On September 14, 2022, the State moved to vacate Mr. Syed's conviction under Criminal Procedure § 8-301.1, alleging newly discovered exculpatory evidence and the discovery of "two alternative suspects." According to the State's motion, the Baltimore

City State’s Attorney’s Office and Syed’s defense counsel had conducted “nearly a year-long investigation” into Syed’s conviction. (Motion to Vacate Judgment at 1). Despite months of investigation, the State did not notify the Lee family of its intent to move to vacate the judgment until Monday, September 12, 2022. Even then, the State did not disclose any details of its investigation or the identity of the two new suspects to the Lee family.

Two days after the State’s motion was filed, Assistant State’s Attorney Becky K. Feldman sent an email to Young Lee, Hae Min Lee’s brother and the victim representative in this case, telling him that an “in-person hearing” on the motion to vacate had been scheduled for the next business day—Monday, September 19, 2022. Ms. Feldman told Mr. Lee that if his family wished to “watch” the proceedings, they could do so via Zoom. She did not tell Mr. Lee that he had a right to participate in the hearing and/or that he had the right to attend the in-person hearing in person.

Mr. Lee wished to attend the hearing in person but could not travel from California on such short notice. He retained undersigned counsel and moved to postpone the hearing by seven days. At the hearing on Monday, September 19th, the Honorable Melissa Phinn heard argument from undersigned counsel and denied the motion to postpone, ruling that the notice to Mr. Lee complied with all statutory and constitutional obligations to victims. Based upon a proffer from the State, the court granted the motion to vacate Syed’s conviction and ordered that Mr. Syed be immediately released.

On September 28, 2022, Mr. Lee filed a notice of appeal to the Court of Special Appeals pursuant to Criminal Procedure § 11-103, which provides victims the right to appeal a final order that “denies or fails to consider a right secured to the victim” by Maryland law. On September 29, 2022, Mr. Lee filed a motion in the Circuit Court for Baltimore City asking the court to stay all proceedings pending appeal.¹ Given the history of the State acting in this case without Mr. Lee’s knowledge, Mr. Lee asked the circuit court to rule on the motion by close of business September 29, 2022, to avoid any prejudice to Mr. Lee’s right to appeal. As of this filing, the circuit court has not ruled on the motion. Accordingly, Mr. Lee now moves pursuant to Maryland Rules 8-422 and 8-425 to stay any further proceedings in the above-captioned case pending the resolution of the appeal.

II. Argument in Support of the State’s Motion

A circuit court’s right to exercise its fundamental jurisdiction over a criminal case may be interrupted by “a stay granted by an appellate court, or the trial court itself, in those cases where a permitted appeal is taken from an interlocutory or final judgment.” *Pulley v. State*, 287 Md. 406, 417 (1980). Because the circuit court in this case has not entered a stay of the proceedings, this Court should order a stay to “preserve . . . [its] appellate jurisdiction.” *Id.* at 419 n.3.

Mr. Lee has the right to appeal the State’s failure to provide him reasonable notice of the motion to vacate and the State’s failure to comply with the Maryland Declaration of

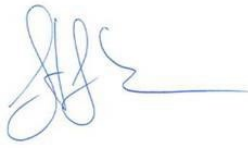
¹ A copy of the motion filed in the circuit court is appended to this motion as Exhibit 1.

Rights’ mandate to treat victims with “dignity, respect, and sensitivity.” Md. Decl. of Rts. Art. 47. To preserve this Court’s appellate jurisdiction and to avoid irreparable prejudice to the Mr. Lee’s right to appeal, Mr. Lee respectfully requests that all circuit court proceedings in the above-captioned case be stayed pending the resolution of the appeal.

WHEREFORE, for all the foregoing reasons Mr. Lee respectfully requests that this Court enter a stay of all proceedings in Case Number 199103042-46 pending the resolution of this appeal.

Dated: October 5, 2022

Respectfully submitted,




Steven J. Kelly, 0312160392
Ari B. Rubin, 2012180050
Sanford Heisler Sharp, LLP
111 S. Calvert St., Ste. 1950
Baltimore, MD 21202
Phone: 410-834-7416
Fax: 410-834-7425
skelly@sanfordheisler.com
arubin@sanfordheisler.com

Counsel for Appellant

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH MD. RULES 8-

112

This brief complies with the font, line spacing, and margin requirements of Md. Rules 8-112 and contains 775 words, excluding the parts exempted from the word count by Md. Rules 8-503.

A handwritten signature in blue ink, appearing to read 'S. Kelly', with a horizontal line extending to the right.

Steven J. Kelly

Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that on this day, October 5, 2022, a copy of the foregoing Motion to Stay the Circuit Court Proceedings Pending Resolution of the Appeal was served via first-class mail, postage prepaid, upon the following counsel of record in the proceedings below.

Erica J. Suter, Esquire
1401 N. Charles St Baltimore, MD 21201
(410) 837-6543
Asst. Public Defender and Attorney for Adnan Syed

Becky Feldman, Esq. Erin Murphy, Esq.
Baltimore City State's Attorney's Office
120 E Baltimore St, 9th Floor Baltimore, MD 21202
(443) 984-6000
Attorneys for State



Steven J. Kelly

Counsel for Appellant

EXHIBIT 1

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

2022 SEP 29 PM 1:48

STATE OF MARYLAND,

v.

ADNAN SYED.

IN THE

CIRCUIT COURT FOR CRIMINAL DIVISION
BALTIMORE CITY

Case Nos. 199103042-46

**MOTION TO STAY THE CIRCUIT COURT PROCEEDINGS
PENDING RESOLUTION OF APPEAL &
POINTS & AUTHORITIES IN SUPPORT THEREOF**

Young Lee, the crime victim representative of the family of decedent Hae Min Lee, the crime victim in the above-captioned case, by and through undersigned counsel, hereby moves pursuant to Maryland Rules 2-632 for an immediate stay of all circuit court proceedings pending resolution of the appeal in this case and, in support thereof, states as follows:

FACTUAL & PROCEDURAL BACKGROUND

1. Adnan Syed was convicted of murdering his ex-girlfriend, Hae Min Lee, in the Circuit Court for Baltimore City on February 25, 2000. His conviction was affirmed in multiple post-conviction proceedings.

2. On September 14, 2022, the State moved to vacate Mr. Syed's conviction under Maryland Code Annotated, Criminal Procedure § 8-301.1, alleging newly discovered exculpatory evidence and the discovery of "two alternative suspects." According to the State's motion, the Baltimore City State's Attorney's Office and Mr. Syed's defense counsel had conducted "nearly a year-long investigation" into Mr. Syed's conviction. (Motion to Vacate Judgment at 1).

3. Yet the State did not notify the Lee family of its intent to move to vacate the judgment until Monday, September 12, 2022. Even then, the State did not disclose any details of its investigation or the identity of the two new suspects to the Lee family.

4. Two days after the State’s motion was filed, the Court apparently conducted an in-Chambers “meeting” at which counsel for all parties were present and at which the motion was discussed. Mr. Lee was not notified of this proceeding, had no opportunity to attend or to be heard at the proceeding.

5. Shortly after the in-Chambers proceeding, Assistant State’s Attorney Becky K. Feldman sent an email to Young Lee, Hae Min Lee’s brother and the victim representative in this case, telling him that an “in-person hearing” on the motion to vacate had been scheduled for the next business day—Monday, September 19, 2022. Ms. Feldman told Mr. Lee that if his family wished to “watch” the proceedings, they could do so via Zoom. She did not tell Mr. Lee that he had a right to participate in the hearing.

6. Mr. Lee wished to attend the hearing in person but could not travel from California on such short notice. He retained undersigned counsel and moved to postpone the hearing by seven days. At the hearing on Monday, September 19th, the Honorable Melissa Phinn heard argument from undersigned counsel and denied the motion to postpone, ruling that the notice to Mr. Lee complied with all statutory and constitutional obligations to victims. Then, based mainly upon a proffer from the State, the court granted the motion to vacate Mr. Syed’s conviction and ordered Mr. Syed immediately released.

7. On September 28, 2022, Mr. Lee filed a notice of appeal to the Court of Special Appeals pursuant to Criminal Procedure § 11-103, which provides victims the right to appeal a final order that “denies or fails to consider a right secured to the victim” by Maryland law. Mr. Lee

now moves pursuant to Maryland Rule 2-632 to stay any further proceedings in the above-captioned case pending the resolution of the appeal.

8. A circuit court’s right to exercise its fundamental jurisdiction over a criminal case may be interrupted by “a stay granted by an appellate court, or the trial court itself, in those cases where a permitted appeal is taken from an interlocutory or final judgment[.]” *Pulley v. State*, 287 Md. 406, 417 (1980). A stay of all proceedings in this case is necessary to preserve Mr. Lee’s right to appeal and to preserve the appellate jurisdiction of the Court of Special Appeals. *See id.* at 406 n. 3.

9. Mr. Lee respectfully requests that all circuit court proceedings in the above-captioned case be stayed pending the resolution of the appeal. Because of the potential for prejudice to Mr. Lee’s rights, he respectfully requests this Court rule upon the motion to stay by close of business, September 29, 2022.

WHEREFORE, for all the foregoing reasons, Mr. Lee accordingly asks that this Court enter a stay of all proceedings in Case Numbers 199103042-46 pending the resolution of the appeal. Mr. Lee asks this Court to rule on the motion by close of business, September 29, 2022.

Dated: September 29, 2022

Respectfully submitted,



Steven J. Kelly, 0312160392
Ari B. Rubin, 2012180050
Sanford Heisler Sharp, LLP
111 S. Calvert St., Ste. 1950
Baltimore, MD 21202
Phone: 410-834-7416

Fax: 410-834-7425
skelly@sanfordheisler.com
arubin@sanfordheisler.com

Counsel for Young Lee

CERTIFICATE OF SERVICE

I certify that on this day, September 29, 2022, I served a copy of the foregoing Motion to Stay the Circuit Court Proceedings Pending Resolution of the Appeal upon the following parties by mailing first-class mail, postage prepaid to:

Erica J. Suter, Esquire
1401 N. Charles St Baltimore, MD 21201
(410) 837-6543
Asst. Public Defender and Attorney for Adnan Syed

Becky Feldman, Esq. Erin Murphy, Esq.
Baltimore City State's Attorney's Office
120 E Baltimore St, 9th Floor Baltimore, MD 21202
(443) 984-6000
Attorneys for State



Steven J. Kelly

STATE OF MARYLAND,

v.

ADNAN SYED.

IN THE

CIRCUIT COURT FOR BALTIMORE CITY

No. 199103042-46

ORDER

Pending before the Court is a motion to stay the circuit court proceedings pending resolution of the appeal. Having considered the motion and any response, the Court hereby grants the motion and stays any proceedings in Case Number 199103042-46 pending resolution of the above-captioned appeal.

So ORDERED this ____ day of _____, 2022.

Judge
Circuit Court for Baltimore City, Maryland